

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0424-02
Bill No.: SB 36
Subject: Environmental Protection; Natural Resources Dept.; Water Resources and Water Districts
Type: Original
Date: January 15, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue*	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund*	(Unknown)	(Unknown)	(Unknown)

*expected to exceed \$100,000 per year

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Attorney General** (AGO) assume that the additional steps in the rulemaking process might require additional staff time in counseling DNR, staff and commissions. AGO assumes that these costs could be absorbed with existing resources. The additional steps in the rulemaking process also provide additional bases for litigation on the validity of rules. Additional litigation would require additional staffing. Because the volume of additional litigation is unknown, AGO assumes the cost of this proposal is unknown.

Officials from the **Office of the Secretary of State** assume this bill calls for scientific documentation and public notice of such before allowing the Hazardous Waste Management Commission, Soil and Water Districts Commission, Land Reclamation Commission, and Safe Drinking Water Commission to promulgate rules. It also says rules promulgated without this scientific evidence may be invalid, which could result in most of the rules being repromulgated. These rules would be published in both the Missouri Register and the Code of State Regulations. The rules, regulations and forms issued by the Missouri Highways and Transportation Commission could require as many as 400 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in Code. These costs are

estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of

ASSUMPTION (continued)

a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. $[(400 \times \$27) + (600 \times \$23) = \$24,600]$

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. Oversight assumes at least part of the cost of printing and distributing rules relating to this proposal could be recovered through sales of the regulations. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Conservation** assume this proposal would have no fiscal impact on their organization.

Officials from the **Department of Natural Resources** assume that in order to promulgate any rule, the Department of Natural Resources and each of its boards and commissions must file the following with the joint committee on administrative rules concurrently with the filing of the proposed rule:

- 1) an explanation and estimate of the risk to the health and safety of the public addressed by the rule;
- 2) the sources of scientific information used in evaluating the risk and summary of such information;
- 3) a description and impact of any uncertainties and the assumptions made in conducting the analysis;
- 4) a description of the expected benefits and risks of the proposed rule to the public health or environment;
- 5) an explanation of the relevant costs and frequency of the cost if the rule was adopted and if the rule was not adopted;
- 6) a description of any significant countervailing risks that may be caused by the proposed rule; and
- 7) alternative approaches that would produce comparable outcomes and an estimate of their relative benefits and costs.

Rule costs to public and private entities are already required to be estimated as a part of the fiscal note. However, the department is not currently required to provide a cost benefit analysis as part

of the filing.

ASSUMPTION (continued)

The department would be required to develop this risk assessment and cost-benefit analysis using scientifically objective and unbiased standards relying on the best reasonably available scientific information. The proposed legislation also outlines where the department must publish notice of availability of any risk assessment or cost-benefit analysis.

Combining the DOH and EPA risk assessment cost data and inflationary increases, it is estimated that the average costs to comply with this legislation would be about \$131,000 per rule. The DNR adopts approximately 65 rules annually. If all 65 rules were subject to the requirements of this legislation the annual cost would be almost \$8.5 million per year, or the equivalent of about 147 new FTEs (assuming \$58,000 annual expenditures, including personal service, fringe benefits, and expense and equipment.) The FTE would be required for the department to establish a toxicological/economic /financial analysis unit, dedicated to research and evaluation activities.

The proposed legislation also places the burden or proof on the department or commission promulgating the rule to prove that the rule is necessary to prevent specific circumstances or conditions causing harm to human health and the environment when the rule is challenged. Since we can not estimate the number of rules that may be challenged each year, the department is unable to determine the impact from this provision.

Oversight assumes that the cost of compliance with this proposal is unknown. Some administrative rules would not require the cost-benefit analysis contemplated in this proposal. Further, Oversight assumes it is not possible to predict the number of rules which would be adopted or the number of rules adopted which would require the scientific review proposed in this legislation, let alone the number which might be challenged. Oversight assumes that any costs resulting from this proposal would be paid from the state General Revenue Fund since program funds would not be available for such costs.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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GENERAL REVENUE FUND

<u>Cost - Department of Natural Resources</u>			
Risk Assessment	(Unknown)	(Unknown)	(Unknown)
Cost-Risk Analysis	(Unknown)	(Unknown)	(Unknown)
Publication Costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
*expected to exceed \$100,000 per year			

<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This act requires all regulations promulgated by the Department of Natural Resources, Hazardous Waste Management Commission, State Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board, Land Reclamation Commission, Safe Drinking Water Commission, Air Conservation Commission, and Clean Water Commission to be based on sound science. The Department of Natural Resources is required to prepare a risk assessment and cost-benefit analysis for all rules promulgated by the referenced agencies.

The risk assessment and the cost-benefit analysis must include specific components which are

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covered in the act and must be developed using scientifically objective and unbiased standards. The assessments and analyses must be made available to the public via the Internet and DNR must allow for and respond to comments from the public. The assessment, analysis, testimony and comments must be considered by the department or the commission in promulgating the

DESCRIPTION (continued)

regulation. The failure of the department to conduct the risk assessment and the cost-benefit analysis will be considered grounds for vacating the regulation. The risk assessment is also required to be filed with the Joint Committee on Administrative Rules at the time the proposed rules are filed pursuant to Section 536.024, RSMo.

A provision is included to allow for the promulgation of regulations without conducting a risk assessment and a cost-benefit analysis if the director believes that the action is immediately necessary to protect the public health and welfare. However, the director must justify these actions in writing and the Department would then have the responsibility to complete the risk assessment and cost-benefit analysis within 45 days.

In proceedings challenging rules promulgated by the Department of Natural Resources, hazardous Waste Management Commission, State Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board, Land Reclamation Commission, Safe Drinking Water Commission, and Clean Water Commission the burden of proof shifts to the department or commission promulgating the rule to prove that the rule is necessary to prevent specific circumstances of conditions causing harm to human health and the environment.

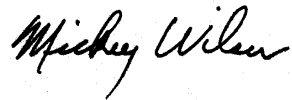
This act removes the ability of third parties to challenge decisions of the Director of the Department of Natural Resources.

The act requires the Department of Natural Resources, Hazardous Waste Management Commission, State Soil and Water Districts Commission, Petroleum Storage Tank Insurance Fund Board, Land Reclamation Commission, Safe Drinking Water Commission, Air Conservation Commission and Clean Water Commission to state specific reasons for denials of permits.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Natural Resources
Department of Health and Human Services
Department of Conservation
Secretary of State

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
January 15, 2003